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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th October 2007

No. 11318—11-1 (BH)-68/2001-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2007 in Industrial Dispute Case No. 21/2062 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Talcher-Angul Development Authority, Angul and its workman Shri Debasis Mishra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 21 OF 2007

The 28th June 2002

Present:

Shri S. K. Mohapatra, O. S. J. S. (Jr., Br.),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of M/s Talcher-
Angul Development Authority,
Angul.

.. **First Party—Management**

And

Its Workman
Shri Debasis Mishra.

.. **Second Party—Workman**

Appearances:

None

.. **For First Party—Management**

Shri B. C. Bastia, Advocate

.. **For Second Party—Workman**

AWARD

The Government of Orissa in Labour & Employment Department referred the present dispute between the management of M/s. Talcher-Angul Development Authority, Angul and its workman Shri Debasis Mishra under Notification No. 10909-L. E., dated the 16th August 2000 vide memo No. 1973 (S)-L. E., dated the 13th February 2002 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether the action of the management of TADA, Angul in terminating the services of Shri Debasis Mishra with effect from the 4th March 2000 is legal and/or justified? If not, what relief is the workman entitled to?”

3. Shorn of all unnecessary details the case of the workman in brief is as follows:

The workman was working as Junior Accountant under M/s Talcher-Angul-Meramundli Regional Improvement Trust (hereinafter referred to as the management) with effect from the 2nd December 1993 on a consolidated pay of Rs. 1,500 per month. Initially the workman was appointed on *ad hoc* basis for 44 days. The initial appointment was extended up to the 15th April 1994 by series of appointment orders issued by the management. Thereafter the workman was appointed for 89 days from the 18th April 1994 and he was allowed to continue in service till the 13th January 1995 with such appointment orders with artificial breaks for one or two days in between two appointment orders. On the 15th March 1995 the management issued another appointment letter to the workman for 180 days but the order was kept in abeyance by the management vide another order passed on the very same day. Although there was availability of vacancy, another man, namely, Shri Naresh Chandra Satapathy was appointed on 44 days basis against the post vacated by the workman, the workman was illegally denied employment although order for extension of 180 days was issued to him with effect from the 15th January 1995. The management was renamed as Talcher-Angul Development Authority (TADA in short) with effect from the 1st September 1995. On 21st October 1995 the management appointed the workman again in the post of Junior Assistant for 44 days through the series of appointment orders for 44 days with artificial breaks for one or two days and the workman continued to work as such under the management. The management stopped issuing any written appointment order after the 3rd March 2000 and he was not given any extension order or wages by the management in spite of several representations made by the workman. On the 3rd September 2000 the Secretary of the management refused employment to the workman. The workman had rendered for more than seven years of service but in spite of that the management did not follow the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). On these averments the workman has sought for relief of reinstatement in service with full back wages.

4. The management has been set *ex parte* vide order, dated the 11th November 2002.

5. In his evidence the workman has deposed about his employment under the management and that he had worked up to the 30th September 2000 but the appointment orders were issued to him up to the 3rd March 2000 only. According to W. W. 1 he was in continuous service since the date of his appointment and had worked for more than 240 days preceding the date of his termination from service by the management by way of refusal of employment. The workman has proved Exts. 1 to 15 to support his oral statement regarding his employment and regarding his continuous service under the management. Out of all these documents Exts. 3/kk to 3/ss are important. All these documents are xerox copies of office orders under which the workman had been temporarily appointed for 44 days in the pay scale of Rs. 950.00—20.00—1,150.00—E.B.—25—1,500.00. Under these documents it is seen that between the period the 5th March 1999 to the 4th March 2000 the workman had worked for more than 240 days under the management. Thus it is very much clear that the workman was in continuous service under the management as required under Section 25-B (2) (a) (ii) of the I. D. Act. The specific evidence of the workman W. W. 1 is that the management did not comply the provisions under Section 25-F of the I. D. Act while terminating his service. The provision under Section 25-F of the I.D. Act lays down certain pre-conditions for the management the event of retrenchment of a workman who is in continuous service within the meaning of Section 25-E of the I.D. Act. In the decision *Shri Shyam Sundar Rout Vrs. Orissa State Road Transport Corporation and others* reported in 69 (1990) O.L.T. 357 it has been held by the Hon'ble Division Bench of the Orissa High Court that the compliance of the provisions under Section 25-F of the I.D. Act is mandatory even if employment is contractual or for specific term. In the instant case there had been no compliance of the provisions under Section 25-F of the I. D. Act by the management by giving one month's prior notice or one month's wages in lieu of notice or retrenchment benefits as required under the I. D. Act simultaneously with the retrenchment order and therefore the retrenchment order of the workman from his service is invalid in the eye of law. Similar view has been taken by the Hon'ble Apex Court in the case of *General Manager, Haryana Roadways Vrs. Rudhan Singh* reported in A. I. R. 2005 Supreme Court 3966. In the said judgment the Hon'ble Apex Court have held that the benefit of 240 days of continuous

service is necessary and not one year of complete service. Thus the non-compliance of the provision of Section 25-F of the I. D. Act renders the termination of service of the workman with effect from the 4th March 2000 is illegal and therefore unjustified. Since the termination of service is illegal, the workman is entitled to the benefit of reinstatement in service.

6. In the case of General Manager, Haryana Roadways *Vrs.* Rudhan Singh (*Supra*) the Hon'ble Supreme Court have held as follows as regards the factors relevant for awarding full/partial back wages.

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e. whether after proper advertisement of the vacancy or inviting applications from the Employment Exchange, nature of appointment, namely, whether *ad hoc*, short term, daily wages, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e. from the date of termination till the date of the award, which experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character can not be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year".

In the instant case the workman had worked under the management for a little over six years under periodical appointments either for 44 days or for 89 days at a stretch and continued till the date of his retrenchment with breaks for one or two days and at times breaks for more days. Under such circumstances it is clear that the appointment of the workman was not of permanent character but it was for short and intermittent period though in the many of the years the workman had worked for more than 240 days. In such a situation it would be wholly inappropriate to award any back wages to the workman.

7. Hence the reference is answered as follows :

(1) The termination of services of Shri Debasis Mishra by the management of Talcher-Angul Development Authority, Angul with effect from the 4th March 2000 is illegal and therefore unjustified.

(2) The workman namely Shri Debasis Mishra is entitled to the relief of reinstatement in service only and not to the relief of any back wages.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. MOHAPATRA
28-6-2007
Presiding Officer, Labour Court
Bhubaneswar

S. K. MOHAPATRA
28-6-2007
Presiding Officer, Labour Court
Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government